



OFFICE *of the* ATTORNEY GENERAL  
GREG ABBOTT

May 7, 2003

Ms. Elaine Sample  
Assistant City Attorney  
City of El Paso  
2 Civic Center Plaza  
El Paso, Texas 79901-1196

OR2003-3075

Dear Ms. Sample:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 180651.

The City of El Paso Police Department (the "department") received two requests for "a list of all incidents" pertaining to two named individuals. You state that portions of the submitted records are not responsive to the instant request for information. You claim that portions of the requested information are excepted from disclosure under sections 552.101 and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

We first address your contention that portions of the submitted records are not responsive to the request, and agree that some of the information that you have marked is nonresponsive.<sup>1</sup> We have marked that information, which the department need not release in response to this request. We have also marked some additional information that is nonresponsive to the instant request and need not be released. However, after careful review of the submitted information, we find that some of the information you marked as nonresponsive is in fact responsive to the request. Therefore, we will address your claims for this information.

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<sup>1</sup>We note that a governmental body must make a good-faith effort to relate a request to information that is within the governmental body's possession or control. *See* Open Records Decision No. 561 at 8-9 (1990).

Section 552.101 excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Section 552.101 also encompasses information protected from disclosure by the common-law right to privacy. For information to be protected from public disclosure by the common-law right of privacy under section 552.101, the information must meet the criteria set out in *Industrial Foundation v. Texas Industrial Accident Board*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). In *Industrial Foundation*, the Texas Supreme Court stated that information is excepted from disclosure if (1) the information contains highly intimate or embarrassing facts the release of which would be highly objectionable to a reasonable person and (2) the information is not of legitimate concern to the public. 540 S.W.2d at 685. Where an individual’s criminal history information has been compiled by a governmental entity, the information takes on a character that implicates the individual’s right to privacy. See *United States Dep’t of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749 (1989). In this instance, the requestor asks for all incidents concerning two named persons. In this case, we believe that these individuals’ right to privacy has been implicated. Thus, where the named individuals are possible suspects, arrestees, or defendants, we conclude that you must withhold this information under common-law privacy as encompassed by section 552.101 of the Government Code. See *id.* We note that information relating to routine traffic violations is not excepted from release under section 552.101 in conjunction with common-law privacy and *Reporters Committee*. Cf. Gov’t Code § 411.082(2)(B).

You also assert that the responsive information contains driver’s license and motor vehicle information excepted from release under section 552.130 of the Government Code. Section 552.130 provides in relevant part:

(a) Information is excepted from the requirement of Section 552.021 if the information relates to:

(1) a motor vehicle operator’s or driver’s license or permit issued by an agency of this state; [or]

(2) a motor vehicle title or registration issued by an agency of this state[.]

We have marked the information that the department must withhold under section 552.130.

In summary, the department must withhold all incident information in which the individuals named in the requests appear as suspects, arrestees, or defendants pursuant to section 552.101 in conjunction with common-law privacy and *Reporters Committee*. We have marked the information that the department must withhold under section 552.130. The remaining responsive information must be released to the requestor.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877)673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512)475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code

§ 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in dark ink, appearing to read "Cindy Nettles", written in a cursive style.

Cindy Nettles  
Assistant Attorney General  
Open Records Division

CN/jh

Ref: ID# 180651

Enc. Submitted documents

c: Mr. Daniel Gonzalez  
Flynn & Associates  
625 Yandell  
El Paso, Texas 79902  
(w/o enclosures)